

ARTICLE 8 BOARD OF ADJUSTMENT

Sec. 18 Appeals to Board of Adjustment.

Appeals to the Board may be taken by any person aggrieved or by any other officer, department, board, or bureau of the municipality affected by a decision of the Treasurer of the Town of Magnolia, in the administration of this zoning code. Such appeal shall be taken within thirty (30) days of the aggrieved decision by filing with the Town Treasurer, a notice of appeal specifying the grounds thereof. The Treasurer shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken.

Sec. 19 Filing Fee.

A fee of fifty dollars (\$50.00) shall accompany each appeal to help offset the cost of the hearing; provided, however, the filing fee may be refunded at the Board of Adjustment's discretion under the following conditions:

(a) The applicant must apply at the meeting of the Board of Adjustment when his application is heard; and

(b) The applicant must show:

- (1) The appeal was filed as a result of a valid order of the Town of Magnolia requiring the applicant to reconstruct or repair a dwelling so as to comply with the minimum housing code; or
- (2) The applicant is a charitable organization qualified for tax-exempt status by the Internal Revenue Service; or
- (3) The Board of Adjustment determines that it does not have jurisdiction to decide the applicant's appeal.

Sec. 20 Effect of Appeal Upon Proceedings.

An appeal shall stay all proceeding in furtherance of the action appealed from, unless the Treasurer certifies to the Board after the notice of appeal is filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application on notice to Treasurer for due cause shown.

Sec. 21 Composition; terms of office.

The Board of Adjustment shall consist of the chief engineer of the Town,

the Town solicitor and the Mayor or an authorized agent of the Mayor.

Sec. 22 Powers of Board of Adjustment.

The Board of Adjustment shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirements, decisions, or determination made by the Treasurer in the enforcement of this code.
- (2) To authorize upon appeal in specific cases such variance from the terms of this code as will not be contrary to the public interest where, due to special conditions, a literal enforcement of the provisions of the code will result in unnecessary hardship, and so that the spirit of the code shall be observed and substantial justice done.
- (3) To authorize such variance from the terms of this code as will not be contrary to the public interest upon receipt of papers transmitted, by the Treasurer pursuant to provisions of this code, without the formality of an appeal; provided, however, that notice to all parties in interest shall be given in the same manner as upon hearing of this appeal.
- (4) To authorize special exceptions for existing lots zoned residential as described in Sec. 33 (c) of this code.

Sec. 23 Authority of Board in exercise of its powers.

In exercising its powers the Board may, in conformity with this code, reverse or affirm, wholly, or partly, or may modify the order, requirement, decisions or determination appealed from and make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Treasurer in the administration of this zoning code. Any order, requirements, decision, or determination of the Board which requires or permits a specific act to be undertaken shall, as a condition thereto, prescribe a reasonable time limit within which such act shall be completed.

Sec. 24 Rules of Board of Adjustment.

The Board of Adjustment shall make and adopt rules in accordance with the provisions of this code.

Sec. 25 Meeting of Board of Adjustment.

Meetings of the Board shall be held at the call of the Mayor and at such other times as the Board may determine. The Mayor, or in his/her absence, the acting Mayor, may administer oaths and compel the attendance of witness. All meetings of the Board shall be open to the public and the Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Town Office and shall be a public record.

Sec. 26 Hearings.

Time Limit for Deciding Upon Appeal-The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties of interest, and by mail to the registered owners of the next five (5) properties adjoining or adjacent, in each direction, to property upon which the appeal centers. The appeal shall be decided within a reasonable time, not to exceed sixty (60) days from the date of the filing of such appeal. Upon the hearing, any party may appear in person or by agent or by attorney, provided that said agent or attorney produces authorization from his principal for acting in such a capacity.

Sec. 27 Petition to court for review of decision of Board.

Any person or persons, jointly or severally aggrieved by any decision of the Board, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to a court of record a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision. The court may allow a writ of certiorari directed to the Board to review such decision of the Board and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the Board, and on due cause shown, grant a restraining order.

Sec. 28 Duties of Board in Case of Writ of Certiorari

The Board shall not be required to return the original papers acted upon by it, but shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

ARTICLE 9. GENERAL PROVISIONS

Sec. 29 Nonconforming uses, structures and buildings.

(a) A building, structure, or use which is not in conformity with the provisions of the code at the effective date of its adoption may be continued in its present location provided that no subsequent alteration or addition is made which would extend said building, structure, or use for more than twenty (20) per cent of the cubical content of the building or buildings or structure or structures existing and used for the nonconforming use, or for more than twenty (20) per cent of the lot area existing and used for the nonconforming use. Any building and structure addition shall conform to the area and height regulations of the district where it is located.

(b) Whenever a nonconforming use has been discontinued for a period of one year such use shall not be reestablished, and any further use shall be in conformity with the provisions of the Code, except that when such discontinuance is on account of any cause beyond the control of the owner, or tenant, the period of abandonment shall, for the purpose of this Code, date from the termination of such cause.

(c) Nothing in this Code shall require any change in the plans, construction or designated use of any building or part thereof, the construction of which shall be lawfully in progress at the time of passage of this Code, or for which a permit shall have been issued pursuant to law, provided construction shall be promptly and diligently prosecuted.

(d) In any case where a district boundary line crosses a building which existed at the time such boundary was established, a use permitted in the less restricted of the two (2) districts may be extended, as a nonconforming use during the life of said building, into that part of the building situated within the more restricted district.

(e) When in the public interest and where loss or damage has occurred to property, to include land and/or buildings, occupied by nonconforming uses, and where such loss or damage has occurred through the action of a governmental agency, the board of adjustment, as provided in Article 8, of this Code may grant as a special exception, after a public hearing, continuance of the nonconforming use. The board of adjustment may further limit but not extend, such nonconforming use to include the size and location on the land of any reconstructed buildings, the modification of existing buildings, and the use of the property, either on the same lot or on a contiguous lot under the same ownership at the time of enactment of the Code.

(f) A nonconforming use of a building or a nonconforming use of a nonconforming building may be extended either on the same lot to a contiguous lot under the same ownership at the time of enactment of this Code if granted as a special exception by the board of adjustment, as provided in Article 8 of this Code, subject to the following special requirements.

- (1) The extension is for a use which is necessarily incident to the existing use;
- (2) The estimated cost of any extension involved does not exceed fifty (50) per cent of the replacement value, as appraised by the Kent County assessor, of the existing building to which it is incident;
- (3) Such extension shall have a floor area not to exceed twenty-five (25) per cent of the floor area of the existing building to which it is incident;
- (4) It will not impair the value of the adjoining property or adversely affect the character of the neighborhood; and
- (5) Provided only one extension shall be permitted by the board of adjustment during the life of a nonconforming use.

Sec. 30 Restoration of existing buildings.

(a) Nothing in this Code shall prevent the restoration of a building destroyed less than seventy-five (75) per cent of its current sound value, exclusive of the foundations, by fire, explosion, act of God or act of the public enemy, subsequent to the passage of the Code. Provided that the restoration shall begin within twelve (12) months from the time of such destruction.

Sec. 31 Accessory uses

Accessory uses shall be permitted only on the same lot with the building to which they are accessory. All accessory uses shall be such as do not alter the character of the premises on which they are located or impair the neighborhood.

ARTICLE 10 CONDITIONAL USE PERMITS

Sec. 32 General Provisions.

(a) The following procedures shall apply to governing the implementation of conditional use permits:

(1) Use permits may be issued for any of the conditional uses for which a use permit is required by the provisions of the Code; provided, that the Town Council shall find the application is in accordance with the provisions of this Zoning Code, and that, after duly advertised hearing, held in accordance with the provisions of Article 12, Sec. 37 the use will not:

- (i) Affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- (ii) Be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- (iii) Be in conflict with the purposes of the Town Public Policy.

In granting any conditional use permit the Council shall designate such conditions as will, in its opinion, assure that the use will conform to the foregoing requirements and that such use will continue to do so.

(2) Construction or operation shall be commenced within one year of date of issuance or the use permit becomes void.

(3) A re-application for a use permit for the same lot shall not be considered by the Town Council within a period of 360 days from its last consideration. This provision, however, shall not impair the right of the Council to propose a use permit on its own motion.

(4) Written application for a use permit shall be filed with the Town Treasurer. Every application shall be accompanied by a fee of Fifty Dollars (\$50.00). The time of hearing shall be within one month of the use permit application filing date.